



House of Representatives

File No. 801

General Assembly

January Session, 2003

(Reprint of File No. 378)

Substitute House Bill No. 6670
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 31, 2003

AN ACT CONCERNING THE CALCULATION OF OVERTIME PAYMENTS.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Subdivision (1) of section 31-76b of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2003*):

4 (1) The "regular rate" at which an employee is employed shall be
5 deemed to include all remuneration for employment paid to, or on
6 behalf of, the employee, but shall not be deemed to include (A) sums
7 paid as gifts; payments in the nature of gifts made at Christmas time or
8 on other special occasions, as a reward for service, the amounts of
9 which are not measured by or dependent on hours worked,
10 production or efficiency; (B) payments made for occasional periods
11 when no work is performed due to vacation, holiday, illness, failure of
12 the employer to provide sufficient work, or other similar cause;
13 reasonable payments for traveling expenses, or other expenses,
14 incurred by an employee in the furtherance of [his] the employer's
15 interests and properly reimbursable by the employer; and other similar

16 payments to an employee [which] that are not made as compensation
17 for [his] the employee's hours of employment; (C) sums paid in
18 recognition of services performed during a given period if either, (i)
19 both the fact that payment is to be made and the amount of the
20 payment are determined at the sole discretion of the employer at or
21 near the end of the period and not pursuant to any prior contract,
22 agreement or promise causing the employee to expect such payments
23 regularly; (ii) the payments are made pursuant to a bona fide profit-
24 sharing plan or trust or bona fide thrift or savings plan, meeting the
25 approval of the Labor Commissioner who shall give due regard,
26 among other relevant factors, to the extent to which the amounts paid
27 to the employee are determined with regard to hours of work,
28 production or efficiency; (D) contributions irrevocably made by an
29 employer to a trustee or third person pursuant to a bona fide plan for
30 providing old-age, retirement, life, accident or health insurance or
31 similar benefits for employees; (E) extra compensation provided by a
32 premium rate paid for certain hours worked by the employee in any
33 day or workweek because such hours are hours worked in excess of
34 eight in a day or in excess of the maximum workweek applicable to
35 such employee under section 31-76c, or in excess of the employee's
36 normal working hours or regular working hours, as the case may be;
37 (F) extra compensation provided by a premium rate paid for work by
38 the employee on Saturdays, Sundays, holidays or regular days of rest,
39 or on the sixth or seventh day of the workweek, where such premium
40 rate is not less than one and one-half times the rate established in good
41 faith for like work performed in nonovertime hours on other days; or
42 (G) extra compensation provided by a premium rate paid to the
43 employee, in pursuance of an applicable employment contract or
44 collective-bargaining agreement, for work outside of the hours
45 established in good faith by the contract or agreement as the basic,
46 normal or regular workday, not exceeding the maximum workweek
47 applicable to such employee under section 31-76c, where such
48 premium rate is not less than one and one-half times the rate
49 established in good faith by the contract or agreement for like work
50 performed during such workday or workweek. For the purpose of

51 calculating the overtime rate of compensation required to be paid to an
52 employee who is (i) employed as a delivery driver or sales
53 merchandise, (ii) paid on a base salary and commission basis, and (iii)
54 not exempt from the overtime requirements of chapter 558, the
55 employee's regular rate shall be one-fortieth of the employee's weekly
56 remuneration.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Impact
Department of Labor	None

Municipal Impact: None

Explanation

The bill makes changes to the allowable method of calculating overtime for certain employees. It is anticipated that the Department of Labor will not see measurable change in the level of activity from overtime wage complaints and therefore no additional resources will be required.

House "A" further defines eligible employee for the purposes of the allowable method of calculating overtime and will not result in a cost.

OLR Bill Analysis

sHB 6670 (as amended by House "A")*

AN ACT CONCERNING THE CALCULATION OF OVERTIME PAYMENTS**SUMMARY:**

Current law permits "variable rate" overtime for certain employees subject to overtime rules. This bill prohibits variable rate overtime for such employees (1) earning both salary and commission and (2) employed as delivery drivers or sales merchandisers.

When the commission potential is relatively small, variable rate overtime can produce a lower overtime rate the more hours an employee works. This is due to a calculation that spreads the total remuneration over all hours (including overtime) worked to determine the rate.

Such employees' overtime is calculated by dividing by the total remuneration (salary and commission) by the total weekly hours worked (including those above 40). This hourly rate is divided by two to produce the variable overtime rate. Any hours worked in excess of 40 are multiplied by this variable rate overtime figure to determine the overtime pay.

*House Amendment "A" narrows the prohibition on variable rate overtime so it only applies to those (1) employed as delivery drivers or sales merchandisers and (2) paid on a base salary and commission basis. It also strikes a provision that maintained the use of variable rate overtime for fixed-salary employees whose jobs require fluctuating work weeks.

EFFECTIVE DATE: October 1, 2003

BACKGROUND***Standard Overtime***

State and federal laws require that, for all employees subject to overtime rules, the overtime hourly rate is one-and-a-half times the employee's regular rate. The regular rate is 1/40th of the employee's weekly remuneration (total pay). The law exempts some employees, such as salespeople and executives, from overtime requirements.

Federal Law and Non-Standard Overtime

The federal Fair Labor Standards Act allows a variable rate overtime calculation and types of overtime other than the standard time-and-a-half formula for certain employees who are subject to overtime rules (29 CFR 778.114, 29 CFR 778.400, and 778.415 through 421). But it also does not preempt stricter states laws, thus leaving it to the states to decide whether to prohibit or allow federally permitted types of non-standard overtime.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 14 Nay 0